IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9362 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL BIPINBHAI KODARBHAI

Versus

EXAMINATION SECRETARY

Appearance:

1. Special Civil Application No. 9362 of 2003
MR MANISH J PATEL for Petitioner No. 1
MR DAVE for MR AD OZA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 17/09/2003

ORAL JUDGEMENT

1. Rule. Mr.Dave, learned Counsel waives service of rule on behalf of the respondent. With the consent of the parties, the matter is taken up for final hearing today.

2. The present petition is preferred by the petitioner for appropriate directions to quash and set aside the order dated 13-6-2003 issued by the respondent Board for imposing penalty upon the petitioner's daughter for cancelling the result and not to allow the petitioner's daughter to appear for the examination till March, 2004.

3. Having heard Mr.Patel, learned Counsel for the petitioner and Mr.Dave, learned Counsel for the respondent Board, it appears that it is the case of the petitioner that the material which was found from the petitioner's daughter was of 10th Standard and it had nothing to do with the examination of 12th Standard and of the subject in which she was appearing and, therefore, it has been submitted on behalf of the petitioner that the result could not have been cancelled or, in any case, the penalty could not have been imposed.

4. On behalf of the respondent Board, Mr.Dave has submitted that it is true that on record of the show-cause notice such was the situation, but as per the record of the Board, the material which was found from the petitioner was changed and, therefore, he submitted that the preliminary inquiry is also held and the respondent Board proposes to issue fresh show-cause notice to the student concerned and the present order under challenge shall stand withdrawn.

5. Considering the above, I find that when the Board has decided to withdraw the order and has taken decision to issue a fresh show-cause notice, opportunity shall be given to the student concerned, in accordance with law, to defend such show-cause notice and, therefore, the present petition would not survive in view of the statement made by Mr.Dave on behalf of the respondent Board. However, Mr.Patel for the petitioner submitted that since the result is not declared and the matter is being delayed, appropriate directions may be given to the respondent Board to complete the inquiry soon even if fresh show-cause notice is to be given.

6. Considering the facts and circumstances of the case, I am of the view that the following directions shall meet with the ends of justice:

6.1 The impugned order dated 13-6-2003 as per the statement of Mr.Dave on behalf of the respondent Board shall not survive as the same shall stand withdrawn.

6.2 The respondent Board shall issue fresh show-cause notice in accordance with law to the petitioner's daughter within a period of 15 days from today.

6.3 The petitioner's daughter may file reply to the said show-cause notice and the proceedings pursuant to the said show-cause notice shall be decided in accordance with law by the respondent Board within a period of three weeks thereafter.

7. The petition is disposed of accordingly. Rule discharged subject to the aforesaid directions.

17-9-2003 (Jayant Patel, J.)

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